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DEC 26 2007

OFFICE OF PETITIONS

In re Application of :
Tanaka, et al. :
Application No. 10/779,628 : **ON PETITION**
Filed: February 18, 2004 :
Attorney Docket No. 248863US6 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed December 4, 2007.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed August 1, 2006. This Office action set a statutory period for reply of three (3) months. No issue fee having been received, the application became abandoned on November 2, 2007. A Notice of Abandonment was mailed on November 30, 2007.

Petitioner states that he did not receive the Notice of Allowance, which he claims was sent electronically. However, after reviewing the application file, there is no indication that the Notice of Allowance was sent electronically. Rather, the file indicates that the Notice of Allowance was mailed via regular mail. The Notice of Abandonment appears to be the first communication from the Office that was delivered electronically.

To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed.¹ A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."² "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing **all** replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."³

Accordingly, on renewed petition, petitioner would need to satisfy elements 1 - 3 above, in particular, submit a copy of a proper docket report evidencing non-receipt of the Notice of Allowance.

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m); and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

¹ See MPEP 711.03(c) (II).

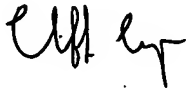
² MPEP 711.03(c) (II) (emphasis added).

³ Id.

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By FAX: (571) 273-8300
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Telephone inquiries related to this decision should be directed
to the undersigned at (571)272-3207.

A handwritten signature in cursive script, appearing to read "Cliff Congo".

Cliff Congo
Petitions Attorney
Office of Petitions